

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Wireless Telecommunications Bureau |) | WT Docket No. 02-46 |
| Seeks Comment on Report on |) | |
| Technical and Operational Wireless |) | |
| E911 Issues |) | |
| |) | |

NEXTEL COMMUNICATIONS, INC. REPLY COMMENTS

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NEXTEL COMMUNICATIONS, INC. REPLY COMMENTS

Pursuant to the October 16, 2002 Public Notice of the Federal Communications Commission (“Commission” or “FCC”),¹ Nextel Communications, Inc. (“Nextel”) submits the following Reply Comments on “A Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services,” by Dale N. Hatfield.² As noted in its Comments,³ Nextel commends the FCC for commissioning this study to evaluate and address critical issues impacting the widespread deployment of Phase II service and Mr. Hatfield for his objective research and insightful recommendations. Numerous parties filed Comments that provide helpful observations and suggestions about how best to overcome the obstacles encumbering efficient E911 deployment.

¹ Public Notice, “Wireless Telecommunications Bureau Seeks Comment on Report on Technical and Operational Wireless E911 Issues,” WT Docket No. 02-46, DA 02-2666, released October 16, 2002.

² “A Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services,” Prepared for the Federal Communications Commission by Dale N. Hatfield (hereinafter, the “Hatfield Report” or “Report”).

³ “Comments of Nextel Communications, Inc.,” WT Docket No. 02-46, November 15, 2002 (“Nextel Comments”).

I. DISCUSSION

A. THE COMMISSION MUST ELIMINATE ARBITRARY E911 RULES, PERMIT ALL STAKEHOLDERS TO WORK TOGETHER IN GOOD FAITH, AND REFRAIN FROM IMPOSING NEW REGULATIONS

Nextel concurs with the parties who support Mr. Hatfield's recommendation that additional rules would be detrimental to efficient Phase II deployment,⁴ and strongly urges the Commission to adopt Sprint's proposal to place a moratorium on new E911 service requirements through December 2005.⁵ Moreover, Nextel supports recommendations that all stakeholders collaborate in good faith to meet the Commission's mandates and that the Commission incorporate flexibility into its current E911 rules.⁶

⁴ See, e.g., "Comments of Nokia," WT Docket No. 02-46, November 15, 2002 ("Nokia Comments"), p. 2 ("Nokia supports Mr. Hatfield's recommendation that the Commission avoid the addition of new requirements during this critical stage of E911 rollout."); "Comments of the Cellular Telecommunications & Internet Association," WT Docket No. 02-46, November 15, 2002 (hereafter "CTIA Comments"), p. 2 ("CTIA strongly endorses the recommendation in Section 4.3 of the Hatfield Report that the Commission avoid the addition of new requirements during this critical stage of rollout."); "Sprint Comments," WT Docket No. 02-46, November 15, 2002 (hereafter "Sprint Comments"), p. 2 (Sprint supports Mr. Hatfield's practical recommendations such as "the Commission should remain focused on the implementation of Phase II services and should resist pressure to continue to create new and additional 911 obligations on wireless carriers."); "Comments of T-Mobile USA, Inc.," WT Docket No. 02-46, November 15, 2002 (hereafter "T-Mobile Comments"), p. 2 ("The addition of new obligations related to testing, routing or uncertainty factors at this late stage in the game would significantly disrupt deployment and further delay delivery of E911 service to the public.").

⁵ Sprint Comments at p. 3 ("The Commission should place a moratorium on new requirements for 911 service through the 2005 completion date for Phase II service.").

⁶ See, e.g., CTIA Comments at p. 2 ("[T]he Commission [should] find ways, within the current regulatory framework, to adjust its rules to fit specific circumstances...this additional flexibility may better facilitate the rollout of wireless E911 services than the rigid application of the Commission's rules."); "Global Locate," WT Docket No. 02-46, November 15, 2002 ("Global Locate Comments"), p. 2 ("[W]e recommend that the present enforcement regime be re-examined and should include, as recommended as one of the Hatfield report's principle recommendations, the exercise of greater regulatory flexibility and presence."); "Comments of Motorola, Inc.," WT Docket No. 02-46, November 15, 2002 (hereafter "Motorola Comments") pp. 1, 3 (Motorola urges "the Commission to incorporate flexibility into the rules for the deployment of wireless E911 services" and notes that "rigid enforcement of the overly optimistic timing benchmarks and accuracy requirements has inhibited the deployment of E911."); and Nokia Comments at p. 1, 2 ("Nokia continues to believe that rigid enforcement of the Commission's aggressive timing benchmarks and accuracy requirements has inhibited the deployment of E911..." and "...strongly urges the Commission to embrace a more adaptable regulatory approach to the rollout of E911.").

Specifically, Nextel urges the Commission to eliminate rules and regulations that were adopted in the past but do not reflect the current operational or economic realities of Phase II deployment. For example, Mr. Hatfield noted that the Commission's handset penetration requirements may unfairly penalize a carrier that has a low churn rate. As the National Telecommunications Cooperative Association ("NTCA") states "[c]arriers would be compelled to offer equipment discounts to their customers in order to meet these targets[,]”⁷ and “[m]eeting rollout targets would require the carrier to identify and contact current customers, an additional expense to be borne by the carrier.”⁸ This cost issue is applicable to any carrier--not just rural carriers--that uses a handset-based Phase II solution and is subject to the Commission's aggressive benchmarks.

The timing of these enormous costs, moreover, significantly increases the burden imposed on wireless carriers. As CTIA stated in its comments, wireless carriers are “in the midst of the most restrictive financial environment in their history” and face formidable obstacles to achieve the Commission's December 31, 2005 95% handset penetration benchmark.⁹ CTIA states that

[b]ecause wireless carriers cannot assume that the Public Safety and wireline network capabilities will be available ubiquitously to mobile customers, wireless carriers are severely constrained in their ability to advertise the benefits of the Phase II wireless E911 capabilities they are provisioning throughout their networks. This inability to advertise the availability of enhanced 911 features will make it extremely difficult for carriers selecting handset-based technologies to incent customers to trade-in their existing handsets in order to satisfy the Commission's

⁷ “Comments of the National Telecommunications Cooperative Association,” WT Docket No. 02-46, November 15, 2002 (hereafter “NTCA Comments”), p. 3.

⁸ *Id.*

⁹ CTIA Comments at p. 4.

requirement that 95% of all subscribers have location-capable handsets by December 31, 2005.¹⁰

The economic downturn and the additional, often unpredictable, costs wireless carriers have incurred to connect public safety answering points (“PSAPs”) with Phase II service have created a burden that was unanticipated when the Commission adopted its Phase II rules.¹¹ Accordingly, Nextel requests that the Commission eliminate its December 31, 2005 95% A-GPS handset penetration rate mandate.

Moreover, requiring each wireless carrier to force its customers to upgrade to Phase II capable handsets by a specific date—instead of permitting customers to voluntarily choose and pay for the product in the competitive marketplace—is contrary to the introduction of safety-related innovations in other industries. For example, in the automotive industry, federal regulators have required that seatbelts, airbags and other safety improvements be included as standard equipment in new vehicles pursuant to staggered implementation dates; however, the government did not require that manufacturers retrofit or replace all currently existing vehicles by a certain date. Rather, upgraded automobiles were made available to consumers, who were then given the choice to obtain vehicles with the additional safety capabilities at their own pace. Today, some manufacturers offer automobiles with more airbags and other occupant protection systems than required by law, leaving the consumer free to evaluate these choices and make his or her own decision balancing cost, safety and other factors.

¹⁰ *Id.* at pp. 4-5, footnote 15.

¹¹ In its November 1, 2002, E911 Quarterly Report Sprint PCS acknowledged that, because of “[t]he unexpected and dramatic downturn in the wireless market,” it did not meet its July 31, 2002 benchmark requiring that 25% of all new handsets activated nationwide must be A-GPS capable. *See* “Sprint Quarterly E911 Implementation Report,” CC Docket No. 94-102, November 1, 2002, p. 5. Moreover, Sprint PCS anticipates that it will not meet the Commission’s December 31, 2002 benchmark requiring 100% GPS activations. *Id.*

This scenario is similar to the Commission's requirement that wireless carriers begin selling A-GPS capable handsets by certain benchmark dates. However, in contrast to consumers being given the *opportunity to purchase* an A-GPS handset, wireless carriers will be *forced to upgrade* nearly all existing handsets by December 31, 2005, whether or not a consumer desires to purchase a new A-GPS capable handset. Unlike automobile safety improvements, which are disseminated into the national vehicle fleet through natural economic forces, wireless carriers will be burdened with manipulating market forces in order to replace the handsets of customers otherwise not interested in a new handset by deeply discounting expensive, high-tech handsets.

The more rational public policy for the Commission to pursue is to assure that Phase II-capable handsets are available and to permit consumers and market forces to guide market penetration. As wireless carriers continue to aggressively introduce new A-GPS handset models, overall penetration rates will increase as consumers make their own choices to move to an A-GPS handset. This balance of marketplace forces and regulation is effective for automobiles—a potentially dangerous product. It surely will effectively serve the public interest in assuring the proliferation of E911 Phase II-capable mobile phones for the American public, without the economic dislocation inherent in the 2005 Phase II mandate.

B. THE COMMISSION SHOULD ENCOURAGE DEVELOPMENT OF FUNDING MODELS TO EXPEDITE PHASE II DEPLOYMENTS

Current PSAP deployment issues often involve a lack of funding for Phase II upgrades. Funding-related issues often delay a local exchange carrier's ("LEC's") or PSAP's ability to timely install equipment or make upgrades necessary to facilitate the transmission of Phase II location information from a wireless carrier's network to a

PSAP's screen.¹² Verizon correctly identifies an "existing hodgepodge of state funding mechanisms" and notes that "[t]he Commission cannot ignore the effect of funding issues on the ability of the states and the carriers to implement wireless E911 solutions."¹³ Moreover, "[m]any of the issues that have slowed the deployment of wireless 911 service have involved determinations about how to develop the financial means to implement and maintain the service."¹⁴

Although numerous states have enacted taxes to fund wireless E911 systems and consumers are led to believe that these taxes are being used for such purposes, many states are using those funds for non-911 related expenditures. For example, state legislatures recently have diverted \$53 million in California, \$10 million in Rhode Island, \$5 million in North Carolina and \$9 million in Oregon from 911 funding to alternative uses.¹⁵ The Commission should address these issues by encouraging the development of funding models that would expedite efficient Phase II deployment.

C. END-TO-END STANDARDS FOR ALL E911 COMPONENTS AND CLEARLY DEFINED STAKEHOLDER ROLES ARE NECESSARY TO FACILITATE EFFICIENT DEPLOYMENT

End-to-end standards for all stakeholders must be adopted quickly to serve as the foundation on which other critical components, necessary for Phase II deployment, can

¹² Verizon notes "cost recovery issues are affecting the willingness of some PSAPs to request implementation of Phase II service, [and that] this issue needs to be separated from the issue of technical readiness." Verizon Comments at p. 2.

¹³ Verizon Comments at pp. 6, 8. Sprint urges the Commission to "consider carefully the impact of the multiple unfunded mandates already being imposed on wireless carriers." Sprint Comments at p. 6.

¹⁴ Verizon Comments at p. 6. The National Emergency Number Association's ("NENA") Strategic Wireless Action Team ("SWAT"), which is actively working to resolve E911 deployment obstacles, is identifying funding-related deployment issues and plans to offer solutions to address these problems.

¹⁵ See, "Enhanced 911 calls still far from wide coverage," USA TODAY, October 25, 2002, pp. B1-B2. Ken Keim, Oregon's 911 director, states that diversion of 911 funds is "going to slow our rollout significantly." *Id.* at B2. Moreover, a New York audit by Comptroller H. Carl McCall revealed that "\$200 million raised

be structured.¹⁶ Moreover, standard feature set specifications for each of the various technologies (i.e. GSM, TDMA, CDMA and iDEN) should be developed to establish their respective technological capabilities as well as to help manage PSAP expectations about each system's functionalities.¹⁷ Without established end-to-end and feature set standards as a basis for decision-making, coordination of technical and operational issues, development of certification programs, review of LEC and PSAP readiness issues, and accommodation of new requirements and future technologies, are virtually impossible.

As end-to-end standards are evaluated, however, the Commission must recognize that all stakeholders have acted on current rules and regulations and, consequently, have expended significant resources to achieve current Phase II deployment readiness levels. AT&T Wireless notes "recommendations should take into account the hundreds of millions of dollars already invested by wireless carriers in responding to PSAP Phase II requests and satisfying the Commission's current requirements."¹⁸ Importantly, "neither the Commission nor any stakeholder can start from a clean slate."¹⁹

In the interim, until end-to-end standards can be identified and established, clearly defined stakeholder roles in the implementation process would facilitate more efficient

since 1991 from E911 taxes [has been used] to pay for police radios, dry cleaning, lawn mowing and travel." *Id.* at B2.

¹⁶ AT&T Wireless states "[T]he Commission should take steps to ensure that the responsibilities of standards-setting bodies are clarified and that there is better specification of E911 implementation standards. [For example] individual jurisdictions are making independent decisions on whether...confidence and uncertainty factors should be delivered to PSAPs. Rather than permit ad hoc jurisdiction-by-jurisdiction negotiations on this issue, as well as a myriad of other E911 implementation matters, the Commission should facilitate further study and consensus on an industry-wide basis." AT&T Comments at p. 3.

¹⁷ Motorola states that "[i]t is essential that PSAPs understand how the different technologies approach location determination and how to maximize the effectiveness of each approach." *See* Motorola Comments at p. 6.

¹⁸ AT&T Comments at p. 4.

¹⁹ *Id.*

Phase II deployment. No single entity is tasked with coordinating or “quarterbacking” the various parties (i.e. wireless carriers, LECs, third party vendors, and PSAPs) involved with PSAP deployments. Providing support for the need to resolve this issue quickly, TruePosition, Inc. states “[t]he most important contribution the FCC can make is to delineate clearly the responsibilities of each of the actors that needs to cooperate to implement E911.”²⁰ Motorola also notes “it is crucial that all stakeholders be accountable and responsible for efforts to ensure that E911 requirements are met.”²¹

Because wireless carriers are currently the only party that can be penalized for slowed or delayed deployments, Nextel has, in some instances, been forced to step into this coordinator position—taking on responsibilities beyond its role—which frequently diverts its resources from other deployments. The inefficiencies of wireless carriers playing “quarterback” are compounded by the fact that they do not have any authority to coordinate the various stakeholders. This can only be accomplished with the voluntary cooperation of all parties. By defining stakeholders’ roles and responsibilities, the Commission can better leverage existing resources to enable each stakeholder to concentrate on its core deployment functions.²²

The absence of clearly defined end-to-end standards, as well as the lack of clearly defined roles and responsibilities for all stakeholders, ultimately results in frequent

²⁰ “Comments of TruePosition, Inc.” WT Docket No. 02-46, November 15, 2002, p. 6.

²¹ Motorola Comments at p. 2.

²² As Nextel noted in footnote 7 of its Comments, substantial coordination among the wireless carrier, LEC, third party vendor and PSAP is necessary to deploy Phase II service. Issues previously not experienced by a carrier can arise in successive deployments. The cited example was intended to illustrate that a trunking issue had to be overcome to establish end-to-end connectivity and achieve deployment in Greater Harris County, Texas. Nextel had to obtain additional trunking to the LEC’s selective router, notwithstanding Greater Harris County’s full readiness to provide Phase II service.

deployment delays for all PSAPs. Accordingly, Nextel requests the Commission to set forth stakeholder roles and responsibilities while end-to-end standards are being defined.

II. CONCLUSION

As discussed herein, Nextel supports the comments and suggestions raised by a number of parties in this proceeding and requests that the Commission consider these recommendations as a means for eliminating the numerous barriers to efficient wireless E911 deployment in the United States.

Respectfully submitted,

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